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09/816,774	03/26/2001	Yoshinori Muzumura	Q63733	5498
7590	05/17/2005		EXAMINER	
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20037-3213				MCAVOY, ELLEN M
		ART UNIT		PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Application Number: 09/816,774

Filing Date: March 26, 2001

Appellant(s): Muzumura, Yoshinori

Jeffrey A. Schmidt

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 February 2005 appealing from the Office action mailed 9 September 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

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(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,119,813 YABE et al 9-2000

10-36875 JAPANESE PATENT 2-1998

APPLICATION

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Yabe et al (6,119,813).

Yabe et al [“Yabe”] disclose a lubricant feeder which is interposed between members rolling or sliding on another, and is used for lubricating these members. The lubricant feeder comprises a solid synthetic resin containing a lubricant in an amount of from 10 to 90% by weight. Examples of the synthetic resin include polyethylene, polypropylene, and polymethylpentene. See column 3, lines 9-25. The lubricant is selected from a white mineral oil and a grease including the white mineral oil as a base oil and an aluminum soap as a thickener. Yabe teaches that other oil ingredients may be incorporated as additives into the lubricant for the purpose of improving lubricity and include medium-chain fatty acid triglycerides. These ester oils may be added to the lubricant in an amount of up to 30 % by weight. Yabe teaches that the lubricant feeder can be used in bearings, ball screws and oil seals for medical apparatuses, machines for cosmetic production, etc., as well as for food-processing machines. See column 4, lines 49-58. The examiner maintains the position Yabe meets the limitations of the claims when the lubricant is a grease for food processing equipment or a lubricant for food-processing equipment. Although using the lubricant feeder at a temperature to not higher than 70°C (158°F) is not disclosed in Yabe as required by independent claim 1, the examiner is of the position that the normal operation of food-processing machines is within the limits of the independent claim.

Claims 1-7 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Application 10-36875.

As set forth by appellant on page 1 of the specification, the Japanese reference discloses a lubricating member for food processing equipment comprising a ultrahigh molecular weight polyolefin and one or more oils selected from the group consisting of liquid paraffin, poly- α -olefin oil, vegetable oil and animal oil. The examiner maintains the position that this disclosure meets the limitations of the claims. Although using the lubricating member at a temperature to not higher than 70°C (158°F) is not disclosed as required by independent claim 1, the examiner is of the position that the normal operation of food-processing machines is within the limits of the independent claim.

(10) Response to Argument

Appellant argues that the examiner does not refer in Yabe to the feature of using the lubricating member at a temperature not higher than 70°C (158°F) as set forth in independent claim 1 which, thus, distinguishes the claimed method over the prior art to Yabe. This is not deemed to be persuasive because the lubricant feeder in Yabe may be used for the very same purpose as the lubricating member in appellant's claims, that for food processing machines. It is not clear from the reference that such machines normally operate at temperatures as high as 70°C (158°F); indeed, it appears from the disclosure and examples in Yabe that normal operating temperatures for food processing machines may be at room temperature. The examiner is of the position that since the lubricating member may be the same and since the lubricating member

may be used for the same purpose, that of providing lubrication to rolling bearings in food processing machines, there is a presumption that the operating temperatures of the food processing machines are the same. The examiner maintains the position that it is not clear that appellant's invention differs from Yabe.

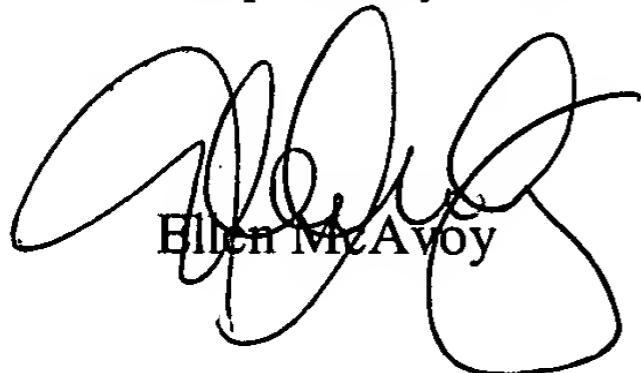
As background, Yabe discloses in column 1 that conventional lubricant feeders have two problems: first, when the feeders are used in food-processing machines for food production, there is the possibility that the lubricant oozing out of the lubricant feeder might contaminate the foods which are being produced; second, there is the possibility that the resin component might also contaminate the food due to the friction with these members. The invention of Yabe eliminates these problems by employing a lubricant and a synthetic resin which are harmless to the human body. Thus Yabe provides a linear apparatus having a highly safe lubricant feeder which is usable in food-processing machines.

Although Yabe does not disclose the feature of using the lubricant feeder at a temperature of not higher than 70°C (158°F), it appears from the above disclosure that at high enough temperatures the lubricant may ooze out of the lubricant feeder and the resin component might contaminate food due to friction. However, it appears that these problems occur infrequently by the use of the words in Yabe of "there is the possibility". Thus the examiner is of the position that for the normal operation of food-processing machines, problems related to the high temperature of the machines do occur but not frequently. Thus the normal operating temperature of the food-processing machines appear to be within the limitations of the claims.

Appellant argues that the examiner does not refer in the Japanese reference to the feature of using the lubricating member at a temperature not higher than 70°C (158°F) as set forth in independent claim 1 which, thus, distinguishes the claimed method over the prior art to the Japanese reference. This is not deemed to be persuasive because the lubricating member in the Japanese reference may be used for the very same purpose, that for food processing equipment. It is not clear from the reference that such equipment normally operate at temperatures as high as 70°C (158°F). The examiner is of the position that since the lubricating member may be the same and since the lubricating member may be used for the same purpose, that of providing lubrication to rolling bearings in food processing machines, there is a presumption that the operating temperatures of the food processing machines are the same. The examiner maintains the position that it is not clear that appellant's invention differs from the Japanese reference.

For the above reasons, it is believed that the rejections should be sustained.

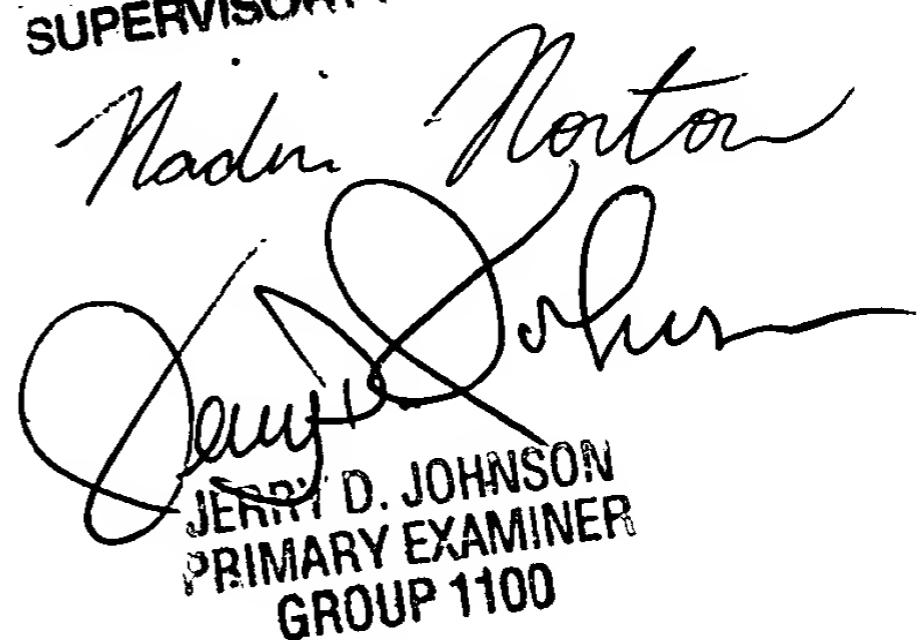
Respectfully submitted,



Ellen McAvoy

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